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122 Mass. 165, 167. But if the policy expressly provides that the beneficiary shall recover regardless of a breach of condition by the insured, such a breach obviously does not prevent the beneficiary from recovering. *Gillard v. Manufacturers' Ins. Co.* (1919) 93 N. J. L. 215, 107 Atl. 446; *Oakland Home Ins. Co. v. Bank of Commerce* (1896) 47 Neb. 717, 66 N. W. 646. The New Jersey court has sought to secure for the travelling public the full security the legislature sought to give. See *Gillard v. Manufacturers' Casualty Ins. Co.* (1918) 92 N. J. L. 141, 143, 144, 104 Atl. 707. To do this in the instant case it was necessary to disregard the expressed condition in the policy and in effect hold the defendant liable on a contract it did not make. As the insurance company had issued a policy on which the public relied, in permitting the insured to operate the bus, such a decision is the more readily justified. This case illustrates the recent tendency away from legalistic formalism.

JURY—SEPARATION IN A CAPITAL CASE.—The defendant was indicted for murder. During the trial, the court permitted the jury to separate. The defendant was convicted. On appeal, *held*, conviction affirmed. The action of the court will not be reviewed unless it appears affirmatively that prejudice resulted to the defendant. *McHenry v. United States* (D. C. Dist. Col. 1921) 49 Wash. Law Rep. 771.

At early common law the separation of the jury in a capital case during the trial was error warranting a new trial or reversal of judgment. See *State v. Cucuel* (1865) 31 N. J. L. 249, 252. There is no separation if the jury is under the supervision of the court or of its sworn officers. *State v. Cucuel, supra*. It has been held that separation, even with the consent of the defendant, vitiates a conviction in a capital case, prejudice to the defendant being conclusively presumed. *Woods v. State* (1871) 43 Miss. 364. The weight of authority, however, leaves it within the court's discretion as to whether the jury be allowed to separate during the trial of a felony punishable by death. *Holt v. United States* (1910) 218 U. S. 245, 31 Sup. Ct. 2; *Stephens v. The People* (1859) 19 N. Y. 549; *State v. Williams* (1905) 96 Minn. 351, 105 N. W. 265. The action of the court is not error unless it has abused its discretion. See *Holt v. United States, supra*, 251. The burden is on the defendant to show that the jurors were improperly influenced by the separation. *Reeves v. The State* (1907) 84 Ark. 569, 106 S. W. 945. An unauthorized separation, in the absence of prejudice to the defendant, is not ground for reversal. *Commonwealth v. Cressinger* (1897) 193 Pa. St. 326, 44 Atl. 433. The burden is on the prosecution to show that the defendant was not prejudiced. *Gamble v. The State* (1902) 44 Fla. 429, 33 So. 471; *contra, People v. Bemmerly* (1893) 98 Cal. 299, 33 Pac. 263. In many states statutes permit or prohibit the separation of the jury in a capital case. Mich. Comp. Laws (1915) § 15833 (permitting); Ky. Code Crim. Proc. (Carroll 1909) § 244 (prohibiting). The rigor of the common law was motivated by the desire both to keep the jury from outside influence and to compel them to reach a verdict. The latter policy has now been abandoned and the rule laid down in the instant case is adequate to secure the former.

LIBEL AND SLANDER—PRIVILEGE—NEWSPAPER—"SLACKER LIST."—The defendant newspaper at the request of the War Department published a "slacker list" which included the plaintiff's name. The plaintiff had not evaded the Draft Law and sued the defendant for libel. The defendant demurred to the complaint, claiming that the publication was absolutely privileged. The court overruled the demurrer, stating that the defendant's privilege, if any, was only conditional. *Hyman v. Press Publishing Company* (App. Div. 1st Dept. 1922) 192 N. Y. Supp. 47.

Important executive government officials are absolutely privileged while discharging their official duties. *Spalding v. Vilas* (1896) 161 U. S. 483, 16 Sup. Ct.